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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

SHARON GOLDSTONE, Plaintiff and Appellant, v. CASEY SWAN, Defendant and Respondent.	A151760 (San Francisco County Super. Ct. No. FDI16786262)

Sharon Goldstone appeals from an order imposing sanctions and requiring reunification counseling at her cost in a proceeding for dissolution of marriage and child custody. She contends the order should be reversed because (1) this relief was requested in a responsive declaration rather than by noticed motion; (2) the sanctions are contrary to public policy, unsupported by the evidence, and imposed without adequate notice; and (3) the reunification counseling is precluded by Family Code section 3026 and was ordered without adequate findings under section 3190.[1] She further requests that a different trial judge be assigned to her case. We will affirm the order.

I. FACTS AND PROCEDURAL HISTORY

Goldstone (Mother) filed a petition for dissolution of her marriage to Casey Swan (Father) on August 1, 2016, seeking joint legal custody but sole physical custody of their children, M. and A.

[1] Except where otherwise indicated, all statutory references are to the Family Code.

Father filed a response and a request for an order of joint legal custody and joint physical custody. He asserted that the children had few overnights with him and Mother was not encouraging them to spend time with him.

Mother disputed many of Father's contentions and claimed the children did not want to spend overnights with him. She requested that the court conduct a "Tier II evaluation" and interview the children. (See San Francisco Sup. Court, Local Rule 11.5, subd. (B).)

A. Order Setting Visitation and Denying Tier II Evaluation

At a hearing on November 1, 2016, the parties debated whether the court should interview the children. Father's counsel argued it would be traumatic for them; mother's attorney pointed out their age and desire to be heard. The court denied Mother's request for a Tier II interview and request to have the children testify. It granted Father's request for joint legal and physical custody, noting that the norm had been set when the parties separated, the children had little time left to spend with Father before going to college, there was no indication Father had ever been a bad influence, and the children should be encouraged to spend time with both parents.

The court issued its written findings and order on December 9, 2016. The visitation (or "timeshare") schedule gave Father alternating weekends with the children and, on the other weeks, Thursday overnights, as well as specified holidays. The order directed the parties to "use their best efforts to follow the ordered custodial timeshare" and provided that, "[i]f the parties do not comply with the spirit of the order[,] it will be considered a separate violation." Based on the parties' stipulations, the court required the parties to appoint a co-parent counselor and comply with specified transportation arrangements. The court further ordered: "The parties agree *they shall not involve the children in the divorce proceeding* and that neither of them shall say disparaging comments about the other parent in their presence and they shall encourage others not to say disparaging comments about the other parent in the children's presence." (Italics added.)

B. Mother's Request for Reconsideration and Modification; Father's Response

On December 16, 2016, Mother filed a request for reconsideration and modification of visitation, urging the court to consider the wishes of M. and A. under section 3042. She asserted that, after the court declined the request for the children to present their views, she "informed them of what happened," they "resolved to write something," and she transmitted their writings to her lawyer. Mother's lawyer submitted a declaration attaching declarations from M. and A., which set forth their problems with Father and why they did not want to have overnight visits with him. Mother's lawyer averred that he formatted these declarations from written statements the children had given him.[2]

Father filed a responsive declaration and opposition to Mother's request on January 17, 2017. He urged that the timeshare remain unchanged. In addition, he requested the following relief: (1) an order for "reunification therapy," with Mother paying 100 percent of the cost, since she had alienated the children against him; (2) an order that Mother be responsible for all transportation of the children to and from exchanges and reunification counseling; and (3) attorney's fees and sanctions, because Mother disregarded the court's order not to involve the children in the proceeding (as evidenced by the declarations the children signed) and interfered with his relationship with them. He alleged that he had not seen the children for several days despite the visitation order.

Mother's reply declaration averred that she had done everything in her power to enforce the court order and had not interfered with Father's relationship. She claimed she consistently told the children that they had to see Father in accordance with the court's schedule. She denied involving them in the case, except to say that the court would not

[2] Also in the record are "supplemental" declarations of M. and A. dated January 12, 2017, in which they contend that recent interactions with Father were upsetting and reinforced their unwillingness to stay overnight with him. Although these documents do not bear a filed-date stamp, Mother's opening brief represents they were "submitted" in January 2017.

hear from them and to give them the custody schedule. She asserted it was the children who had insisted that they have a voice in the matter. Her reply memorandum also argued that sanctions and therapy costs were inappropriate because such relief could be obtained only by a separate noticed motion.

Father filed a supplemental declaration, asserting that Mother was frustrating the purpose of the order requiring co-parent counseling because she refused to participate in the counseling sessions with him in the room. Father also reiterated the need for reunification counseling and transportation orders. Mother objected to Father's arguments and to the declaration as late.

At a hearing on February 28, 2017, Father's counsel asserted that the children were not talking with Father, there was an ongoing problem with the visitation schedule, reunification therapy was needed, and Mother should not have brought the children into the proceeding by attaching their declarations to her reconsideration request. Mother's counsel responded that the declarations were offers of proof of the children's wishes.

The court denied Mother's motion for reconsideration. It clarified its prior order refusing to allow testimony from the children or conduct a Tier II interview: "As guided by the best interest of the children, the Court denied the request to have the children testify or submit to a Tier Two Interview. The Court made its findings of Joint Legal and Physical Custody and timeshare after reviewing the evidence before it. The Court made a record of its findings and rulings at the hearing itself. These findings reflected the Court's analysis as to why it would be in the children's best interest for [Father] to have the time awarded and joint custody. These findings were made after having considered the evidence of the deteriorated state of [Father's] relationship with his children and the little time left before the children reach adulthood. [Mother] correctly points out that the Court stopped short of specifically stating that the court found that it would be contrary to the best interest [and] well[-]being of the children to testify about and against their parents. The Court specifically states this finding now which reflects the belief held by the Court at the time of the hearing as clearly demonstrated from the context of the surrounding findings and orders."

The court scheduled a hearing for March 17, 2017, to tackle the issues of Mother's request to modify visitation and Father's requested relief. Mother subsequently filed a memorandum of points and authorities and declarations opposing the imposition of sanctions, arguing that her motion for reconsideration had merit and sanctions would impose undue financial hardship.

C. March 17, 2017 Hearing and May 5, 2017 Order

At the hearing on March 17, 2017, the parties advised that they had stipulated to keep the visitation order in place (resolving Mother's request to change it) and that they would share transportation duties. The court then heard the remaining issues: Father's request for attorney's fees (as sanctions under section 271) and reunification counseling.

1. Mother's Testimony

Mother testified that she was aware of the court's orders on November 1, 2016, including the timeshare allocation and the requirement that the children not be involved in the divorce process. As to co-parenting therapy, Mother testified that she went to five sessions but was not ready to do sessions in the same room as Father.

As to involving the children in the proceeding, Mother confirmed that she told the children what "happened" at the November 1 hearing – namely, that they would not have the opportunity to speak – and gave them the custody schedule. She denied telling M. that the judge "tricked" anyone, but admitted that she "told [M.] he had a right to speak in the court that was guaranteed to him under the Family Law Code and the judge did not follow the law" as she understood it. She then facilitated the transfer of the children's declarations to her lawyer.

As to the visitation order, Mother testified that she told the children there was a court order requiring them to see their Father and they had to go. At first, they went (M. two or three times, A. more), but eventually they refused. Mother insisted it was not because she gave them the option to go, but because she was unsuccessful in forcing them. She denied disparaging Father and insisted that she encouraged them to see him. She admitted that while she was unable to take them for visits with Father, she was able to take them to their extracurricular activities. She further acknowledged that she did not

take away their extracurricular activities or punish them for refusing to see Father, but claimed that was because they were stressed and distraught. She also testified about events leading up to the problems with the children and Father, summarized her efforts to promote the children's relationship with him, and claimed it was upsetting for them to stay with Father overnight.

2. Father's Testimony

Father testified that he had a good relationship with the children before November 1, 2016 – the date the court ordered the visitation schedule – and they would see each other almost daily, engage in activities, and had good communication. But after November 1, the relationship was tense. The first day after the court's order, M. told Father that Father's lawyer had "tricked the judge into getting the verdict that you wanted." Father thereafter had only four overnights with M., another three on vacation, and maybe six or seven overnights with A. and another three on vacation. M. stopped visiting after Thanksgiving, and A. eventually stopped visiting as well. Because Mother would not talk to Father and constantly directed him to talk instead to the children about the need to visit, it seemed she delegated responsibility for compliance with the order to the children, painted him as just another person they can say no to without consequence, and left it to Father to convince them to comply rather than taking responsibility herself. Father believed Mother treated the children as if they were emancipated and damaged his relationship with them. As one example, although the children were supposed to be with him for New Year's Eve, M. called Father and said he had other plans.

3. Court's Order

On May 5, 2017, the court issued a statement of decision containing its findings and orders.[3]

[3] The court issued a statement of decision on April 7, 2017. Mother filed objections. The court then issued a notice advising that the April 7 statement was re-titled as a proposed statement of decision, and the statement of decision would follow. The statement of decision was filed on May 5.

The court ruled that Mother had violated the court's prior order not to involve the children in the proceeding. Based on Mother's own testimony, she facilitated the submission of the children's declarations to the court. "As a result, the children were directly involved in the proceeding in contravention to the Court's express order." Mother also provided inconsistent testimony, because she stated in a declaration that she had not involved the children in the divorce proceeding other than to answer whether the court would hear from them, but her "conduct reflects she did more than this" and, as she admitted, she "told at least one of the children that the Court in its initial decision did not follow the law and the child's rights were violated."

The court also concluded that Mother failed to comply with the visitation order. Mother knew of the visitation order, but the contact between the children and Father had diminished. Father testified that this harmed his relationship with the children, they no longer wanted to see him, and communications were strained. The court found unpersuasive Mother's defense that she "cannot control the children," noting that she drove them to and from their extra-curricular activities and school, and drove M. to stay at a friend's house on a court-ordered day for Father. The court concluded that Mother "indeed has a reasonable amount of control over the children and certainly had the ability to comply with Court ordered visitation or at a minimum make efforts to curb the children's behavior," but that "she did not make any such concerted efforts to comply with the Court order."

The court further found it to be in the children's best interest to engage in reunification counseling with Father, and that Mother pay 100 percent of the cost (up to $5,000). The court noted that, under section 3190, it can require the parents and minor children to participate in counseling and allocate the cost as the court deems reasonable. In this case, there was sufficient cause to order the counseling at Mother's cost due to "her conduct which has interfered with [Father]'s visitation rights as ordered by this Court." The court determined that its findings were consistent with the policy of promoting frequent and continuing contact with the minor children, a factor included in considering the children's best interests. (See § 3011.)

In addition, the court ordered Mother to pay attorney fees to Father as sanctions under section 271. In support of this order, the court found: Mother "was aware of and intentionally disregarded the Court's orders concerning sharing transportation duties of the children and . . . not involving the minor children in the divorce proceeding despite the fact the record was clear she had the ability to comply with both;" the violation of the orders "was a direct interference in [Father]'s visitation rights," showing the children that disregarding Father and visitation was acceptable; Mother's "conduct was damaging to the children's ability to maintain and improve their relationship with their father;" Mother showed a "consistent pattern of interfering with [Father]'s timeshare;" Mother did not attend co-parenting counseling in the same room as Father; and Mother's testimony was inconsistent. The court added: "[Mother] had requested a modification of visitation along with her request for reconsideration filed December 16, 2016 but was non-specific as to what she was requesting regarding her modification request. It wasn't until the day of the evidentiary hearing on March 17, 2017 that [Mother] stipulated to keeping visitation unchanged. Up to that point, the parties had already appeared at two prior hearings on January 30, 2017 and February 28, 2017 and had prepared for trial." The court concluded that Mother "has engaged [in] obstreperous conduct sufficient to order her to pay attorney fees" of $7,525, and that, based on the record, the amount did not represent an unreasonable financial burden.

This appeal followed.

II. DISCUSSION

A. Lack of Notice Motion

Mother complains that the court imposed sanctions and required reunification counseling at her cost, even though Father had requested this relief only in his response to her motion for reconsideration and not by a separate noticed motion. She contends this violated section 213.

Section 213 provides that a party responding to a motion "may seek affirmative relief alternative to that requested by the moving party, *on the same issues* raised by the moving party, by filing a responsive declaration within the time set by statute or rules of

court." (§ 213, subd. (a), italics added; see *In re Marriage of Seagondollar* (2006) 139 Cal.App.4th 1116, 1127.) If the responding party seeks affirmative relief on issues not raised by the moving party, the party must file a separate request for an order with sufficient notice before the hearing. (Code Civ. Proc. § 1005, subd. (b); Cal. Rules of Court, rule 5.92, subd. (g)(2).)

The parties debate whether Father's requested relief – for sanctions and for reunification counseling – pertained to "the same issues" of visitation raised by Mother. But even if Father's requested relief had raised unrelated issues requiring a separate noticed motion, Mother does not demonstrate that the absence of a separate noticed motion made any difference.

Mother plainly had notice of Father's requested relief and an opportunity to respond. In fact, she did respond. She filed a memorandum of points and authorities, her own declaration, and a declaration by her attorney in opposition to Father's requested relief, and she testified at the hearing. Although she now makes the conclusory assertion that, if she had a reasonable opportunity to address Father's arguments, "there is a reasonable likelihood that the court would not have issued the sanctions and orders it did," she does not explain why. Because she fails to establish that she would have obtained a better outcome if a formal noticed motion had been filed, she fails to establish reversible error.

B. Sanctions Under Family Code Section 271

Section 271, subdivision (a) provides: "Notwithstanding any other provision of this code, the court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction."

Mother argues that the sanctions award must be reversed and the matter remanded because (1) sanctions were imposed for activity protected by the policy underlying section 3042; (2) certain grounds for the sanctions order were not supported by

substantial evidence; and (3) she did not have sufficient notice of some of the bases on which the sanctions were imposed.

1. Public Policy Favoring Input From Older Children (Section 3042)

Mother contends the order imposing sanctions was improper to the extent it contravened a public policy purportedly reflected in section 3042, which gives certain children a right to be heard in custody proceedings. More specifically, Mother argues, she should not be sanctioned for facilitating the children's communication with the court.

Section 3042, subdivision (a) requires the court to "consider and give due weight to" a child's wishes in making an order granting or modifying custody or visitation, if the child "is of sufficient age and capacity to reason so as to form an intelligent preference as to custody" or visitation. "If the child is 14 years of age or older and wishes to address the court regarding custody or visitation, the child shall be permitted to do so, unless the court determines that doing so is not in the child's best interests. In that case, the court shall state its reasons for that finding on the record…." (§ 3042, subd. (c).) Subdivision (f) of section 3042 adds that "[a] party or a party's attorney may [] indicate to the judge that the child wishes to address the court or judge." (See also Cal. Rules of Court, rule 5.250; *In re Marriage of Winternitz* (2015) 235 Cal.App.4th 644, 655; *Ian J. v. Peter M.* (2013) 213 Cal.App.4th 189, 211.)

Mother contends the court "ignored" section 3042 in the prior visitation order and the May 5, 2017 orders and continued to refuse to hear from the children, and she had a right under section 3042 to bring to the court's attention her children's desire to address the court.

However, Mother was not sanctioned for merely bringing the children's desires to the court's attention. She was sanctioned because, even though the court had already ruled that having the children testify would not be in their best interest, and even though the court had ordered Mother not to involve the children in the proceeding, she did just that: telling M. " 'he had a right to speak in the court that was guaranteed to him under the Family Law Code and the judge did not follow the law' " and facilitating the delivery of the children's written statements to her attorney and their presentation to the court.

Mother maintains, as she did in the trial court, that it was the children who on their own resolved to have their views expressed to the court, and she merely told them the judge would not let them testify and provided them with the custody schedule. To the contrary, as Mother averred in her declaration and admitted under oath at the hearing, she also told them the judge was wrong. Moreover, the trial judge was not obligated to accept Mother's attempt to shift the blame to M. and A. Certainly one permissible inference from the evidence is that the children wrote their statements at Mother's (implicit) prompting or, at least, without her discouragement. And even if it were believed that the written statements were entirely the children's doing, it was still Mother who, instead of stepping in and stopping the children's involvement, affirmatively delivered the statements to her attorney for the attorney to transform them into declarations and present them to the judge.

Mother next continues her insistence that the court was wrong in refusing to hear from the children, because they had a right to be heard unless the court made specific findings as to why it was not in their best interest, and the court's statement of reasons in the February 28, 2017 order – that "it would be contrary to the best interest [and] well-being of the children to testify about and against their parents" – was too conclusory. (Citing *Y.R. v. A.F.* (2017) 9 Cal.App.5th 974, 985 [under § 4056, court must do more than issue conclusory findings as to a child's best interest].) Even if those findings were insufficient – a conclusion we do not reach – a deficiency in the findings might give Mother a right to *challenge* the order, but not to *disobey* it.

Lastly, Mother tells us the court's decision to sanction her will have a "chilling effect in this and potentially other cases," precluding her from "advocat[ing] for the children by informing the court of their wishes." She proclaims the court apparently adopted a "policy" that children should never testify about or against their parents. And she urges in her reply brief that "[t]he court has sent a clear message that it does not want to hear from the children regardless of their age, maturity, or the concerns they raised about their safety and well-being." But Mother's hyperbole misses the mark. The court did not adopt any "policy" against children testifying about their parents; it made a

finding in this particular case, and Mother fails to show that either this finding or the sanctions finding was unsupported by the evidence.

2. Substantial Evidence of Failure to Comply With Visitation

As additional support for its sanctions award, the court found that Mother failed to comply with the visitation schedule despite her ability to control the children. Mother contends the record does not support this finding.

The court's finding was supported by ample evidence. It is undisputed that Mother knew the visitation (and transportation) schedule set by the court. She was ordered to use her best efforts to get the children to visit Father as the order set forth. And yet, the children did not participate in visitation as ordered. Although Mother claimed she tried very hard and could not physically force them to go, it was the province of the trial court to assess her credibility. Having reviewed the parties' written submissions and observed the witnesses testify, it was within the court's broad discretion to conclude that Mother was not credible, she did not exert her best efforts to enforce the visitation requirement, she had sufficient control over her children (whom she drove to extracurricular activities and to an event on the night M. was supposed to see Father), and in light of the circumstances of this case, the failure of visitation was indeed willful on her part.

Mother refers us to *Coursey v. Superior Court* (1987) 194 Cal.App.3d 147 (*Coursey*), which vacated an order holding a mother in contempt after her 14-year old daughter missed a visit with her father. There, the court noted that the case did not involve a child "of tender years" over whom the parent had absolute control, such that the failure of visitation could fairly be attributed to the parent's willful violation of the order. (*Id.* at p. 154.) The court added: "Common experience tells us we may not merely *assume without proof* that a mother can reasonably compel a teenaged daughter to visit against the daughter's strong wishes." (*Id.* at pp. 155. Italics added.)

Coursey, however, is plainly distinguishable. First, unlike this case, *Coursey* involved "the most drastic of all remedies available to redress a failure of visitation" – a contempt proceeding – which requires proof beyond a reasonable doubt akin to a criminal

case. (*Id*. at p. 153.) Second, in *Coursey* the daughter had failed to visit the father only one day, and there was "[n]o evidence" of mother's ability to compel her daughter to visit the father or even her relationship with her daughter. (*Id*. at p. 155.) Here, the failures of visitation were numerous and ongoing, and there was more than adequate evidence of Mother's relationship and control with respect to the children.

3. Delay in Resolving Dispute and Inconsistent Testimony

The court also stated that sanctions were warranted because of "[Mother's] delay in resolving the disputed issue of visitation until March 17, 2017 when she agreed to keep the present visitation orders intact with no modifications as originally requested by her, and her inconsistent testimony where she admits gross errors in her Income and Expense Declaration. . . ." Mother argues that the court could not sanction her on these grounds because she did not receive adequate notice.

Section 271, subdivision (b) requires that an award of fees and costs under the section "shall be imposed *only after notice to the party* against whom the sanction is proposed to be imposed and opportunity for that party to be heard." (Italics added.) She insists she was entitled to timely notice of "*each* ground" on which sanctions were sought, so she could properly review and consider what evidence and legal authorities to use in opposing sanctions.

It is true that Father's request for sanctions was not originally premised on Mother's delay in resolving the visitation dispute until the March 2017 hearing, or on her inconsistent testimony at that hearing, since those events had not occurred when he filed his request. But her delay in resolving the dispute and her inconsistent testimony were not separate grounds for the sanction award; they were facts that contributed to the court's overall conclusion that Mother had acted obstreperously and sanctions under section 271 were warranted. (§ 271, subd. (a) [attorney's fees awarded as sanctions where party "frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys"].)

In any event, Mother fails to establish prejudice. She argues that, if she had notice that she might be sanctioned for delaying resolution of the visitation dispute and testifying inconsistently, she would have "adamantly opposed" sanctions on those grounds. But aside from the fact that it was reasonably foreseeable such conduct might be considered under section 271, nothing in the record or Mother's briefs indicate her "adamant[]" opposition would have done any good. In her opening brief, she claims she had legitimate reasons to request modification of the visitation schedule due to the problems the children were experiencing, but she still does not explain why her revelation to keep the schedule as-is did not occur until the hearing. As to the income and expense declaration, she explains that income from her business was inadvertently omitted from her declaration but shown in a schedule, and that rental income had paid for a mortgage and expenses. But the court heard these excuses *before* it imposed the sanctions. And although Mother now claims she would have presented "further evidence" had she known the judge would sanction her for these things, she does not say what that evidence would be.

C. Reunification Counseling and Costs

The court ordered "reunification counseling between [Father], [Mother] and the minor children with [Mother] covering 100% of the costs of the counseling based on her conduct which has interfered with [Father's] visitation rights as ordered by the court." Mother contends the court could not require reunification services due to section 3026 and the order fails to comply with section 3190.

1. Section 3026

Section 3026 reads: "Family reunification services shall not be ordered as a part of a child custody or visitation rights proceeding. Nothing in this section affects the applicability of Section 16507 of the Welfare and Institutions Code." Section 16507 of the Welfare and Institutions Code provides in part: "Family reunification services shall be available without regard to income to families whose child has been adjudicated or is in the process of being adjudicated a dependent child of the court under the provisions of Section 300." (See *Guardianship of Kaylee J.* (1997) 55 Cal.App.4th 1425, 1432

["family reunification services" are reserved for dependency proceedings; court erred in requiring the parties to develop a "reunification plan" in a guardianship proceeding].) Mother argues that this case is a custody and visitation proceeding, so the court was without jurisdiction to make its order.

Mother's argument is meritless. The court did not order "family reunification services" in violation of section 3026. "Family reunification services" refers to a package of assistance provided through a government agency in dependency cases, directly or by referral, for the purpose of returning a child in temporary out-of-home care to the parents. (Welf. & Inst. Code, §§ 361.5, subd. (a), 16507, subds. (a), (b); see Welf. & Inst. Code, § 10053, subd. (a) [defining "services" as "activities and functions performed by social work staff and related personnel of the department and county departments"].)

Here, rather than ordering family reunification services (or requiring the parties to create a reunification plan), the court ordered counseling in the best interest of the children, explicitly under section 3190, to mend the relationship between the children and Father. Father had argued in his trial brief that "reunification counseling" should be ordered because Mother turned the children against him. After the hearing, the court ordered "reunification counseling" based on its finding that Mother's conduct "interfered with [Father's] visitation rights as ordered by this Court" and damaged his relationship with the children. There is no indication that section 3026 precludes an order for counseling that is in the child's best interests, even if it is for the purpose of reunifying with one of the parents. Indeed, such a construction would conflict with section 3190, to which we turn next.

2. Section 3190

Section 3190 authorizes the court to "require parents . . . involved in a custody or visitation dispute, and the minor child, to participate in outpatient counseling with a licensed mental health professional, or through other community programs and services that provide appropriate counseling, . . . for not more than one year." (§ 3190, subd. (a).) Such an order requires a finding by the court that the dispute "poses a substantial danger to the best interest of the child" and that the "counseling is in the best interest of the

child." (§ 3190, subd. (a).) The court may order the parent to bear the cost if it "does not otherwise jeopardize a party's other financial obligations…." (§ 3190, subd. (c).) These findings must be stated with reasons in the court's order. (§ 3190, subd. (d).) Mother contends the court in this case did not make the required findings.[4]

Mother's arguments are unavailing. The court found that Mother had interfered with Father's court-ordered visitation rights and thereby damaged his relationship with the children, and it explained that promoting frequent and continuing contact with Father was a factor in the children's best interests. It also found that the sanctions it was imposing under section 271 did not represent an unreasonable financial burden. Although the court did not make the specific findings required by section 3190, the reasonable inference from its findings is that the court indeed concluded that the dispute posed a substantial danger to the children's best interests, reunification counseling was in their best interests, and allocating the first $5,000 of the cost to Mother would not jeopardize her financial obligations. (§ 3190, subd. (a), (c).)

Moreover, Mother waived any argument that the court had to make the specific findings set forth in the statute. She did not object to Father's request for reunification counseling before or at the time of the March 2017 hearing. To the contrary, in the parties' Stipulation and Order submitted at the start of that hearing, Mother *stipulated* that the parties "shall participate in family therapy with Ms. Tracey Herman Broome with the parties' children," with only the frequency of that therapy and the allocation of its cost to be determined by the court. Nor did Mother object to the statement of decision on the specific ground that the court failed to make required findings under section 3190.

Mother next argues that any counseling order must consider constitutional issues involved in compelling someone to undertake counseling. (Citing *In re Marriage of Matthews* (1980) 101 Cal.App.3d 811, 817–818 [discussing due process in context of

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[4] It is unclear why Mother, who testified so adamantly that the children's relationship with Father was broken, now opposes the counseling that might repair it – especially since she agreed to such counseling before the hearing. Regardless, we turn to the merits.

counseling orders].) She contends that "[n]othing in the court's decision indicates that it did so in ordering counseling," so the order must be reversed.

Mother's argument is meritless. She did not assert any constitutional challenge to the counseling order in the trial court. Furthermore, she misperceives appellate review. We do not reverse a decision merely because a judge did not explicitly state that it considered constitutional issues that the parties never raised. To the contrary, we presume the court complied with its duties and duly considered the law, subject to the appellant affirmatively demonstrating otherwise from the record. (See *Wilson v. Sunshine Meat & Liquor Co*. (1983) 34 Cal.3d 554, 563.) Mother fails to do so here.

Finally, Mother argues that the court may not order counseling beyond one year, and here, the order for reunification counseling does not include a time limit. (§ 3190, subd. (a).) Again, Mother has not affirmatively established error. There is no statutory requirement that the order specify a time limit, and because the order does not state that counseling *will* extend beyond a year, there is no error shown.

3. Reunification Costs

Mother contends the court improperly ordered her to pay reunification costs on the grounds of the same conduct for which it sanctioned her under section 271. She cites no legal authority that the court cannot do so. She fails to demonstrate error.

D. Request to Assign Proceedings to a Different Judge

Mother asks us to order that further trial court proceedings shall be heard by a different judge. (See Code Civ. Proc. § 170.1, subd. (c); *In re Marriage of Walker* (2012) 203 Cal.App.4th 137, 153.) She argues that the current judge repeatedly refused to allow the children to be heard and sanctioned Mother for trying to facilitate their communication with the court, so the judge must be biased against her. She also notes that the judge admonished her attorney when he tried to explain the law to the court and asked the court why it would not allow the children to be heard.

The fact that the judge ruled against Mother does not demonstrate bias, whether he was correct in those rulings or not. (*In re Marriage of Tharp* (2010) 188 Cal.App.4th

1295, 1328; *Dietrich v. Litton Industries, Inc.* (1970) 12 Cal.App.3d 704, 719.) We have reviewed the record, and it does not disclose any bias against Mother.[5]

III. DISPOSITION

The order is affirmed.

[5] Mother filed a request for judicial notice of certain legislative history materials regarding amendments to section 3042. She acknowledges that the materials were not presented to the trial court, but she argues they are subject to judicial notice under Evidence Code section 452, subdivisions (c) and (h). We deferred ruling on the request until consideration of the merits. (*People v. Preslie* (1977) 70 Cal.App.3d 486, 493.) We now deny the request. (*Id*. at p. 494; *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc*. (2005) 133 Cal.App.4th 26, 29–31.)

NEEDHAM, J.

We concur.

JONES, P.J.

SIMONS, J.

(A151760)